

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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**BINGHAMTON MOTOR CAR  
CORPORATION d/b/a EMPIRE MOTOR  
CAR,**

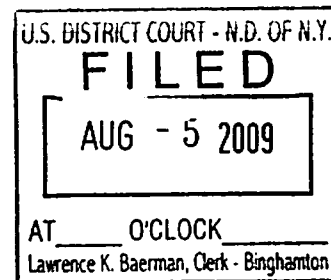
*Plaintiff,*

vs.

**MERCEDES-BENZ USA, LLC,**

*Defendant.*

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**ORDER ADJUDICATING  
PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
AND DEFENDANT'S CROSS-  
MOTION FOR SUMMARY  
JUDGMENT**

Civil Action No.  
3:08-cv-818-TJM-DEP

Plaintiff having moved the Court for an Order: (1) granting it partial summary judgment declaring that Defendant must, pursuant to the New York Franchised Motor Vehicle Dealer Act (N.Y. Veh. & Traf. Law §§ 460, et seq.) and the Federal Automobile Dealer's Day in Court Act (15 U.S.C. § 1221, et seq.), consider in good faith any substitute dealer tendered in good faith by Plaintiff, and/or that Defendant's failure to properly consider Mr. Richard Perry as a substitute dealer has effected an approval of such tendered substitution; (2) granting Plaintiff its reasonable costs and attorney's fees in bringing this motion; and (3) such other and further relief as the Court deems just, equitable and proper; and

Defendant having opposed Plaintiff's motion and cross-moved for an Order granting it summary judgment with respect to all claims in the Amended Complaint that arise out of Plaintiff's submission to Defendant of an Asset Purchase Agreement dated November 17, 2008 and/or any other efforts to sell its dealership assets after May 9, 2008 (see Amended Complaint ¶¶ 23-29), including but not limited to the First, Second, Third, Fourth and Fifth Causes of Action to the extent that they are based on the foregoing transactions and occurrences (see Amended Complaint ¶¶ 37, 42, 52, 55 and 62); and

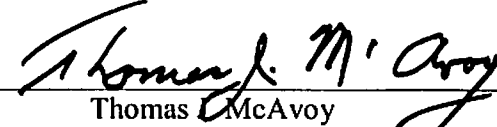
The Court having read and considered the papers and the arguments of counsel submitted in support of and in opposition to the motion and cross-motion; and

The Court having rendered a Decision from the Bench on July 14, 2009; it is hereby

**ORDERED**, that Plaintiff's motion for partial summary judgment is denied; and

**ORDERED**, that Defendant's cross-motion for summary judgment is granted and that all claims in the First Amended Complaint that are based on or arise out of Defendant's refusal to consider and/or approve the Asset Purchase Agreement dated November 17, 2008 referred to in paragraph 23 of the First Amended Complaint (see First Amended Complaint ¶¶ 37, 42, 52, 56, and 62) are dismissed with prejudice.

DATED: *August 4*, 2009  
Binghamton, New York

  
Thomas J. McAvoy  
Senior United States District Judge